

Proposed Text of Regulations

Title 2, California Code of Regulations, Division 3, Chapter 1

[Explanation: The proposed rulemaking would add all of the following language to the California Code of Regulations. Commission staff has altered some provisions in response to public comments and in an effort to improve the resulting process. This version has removed all tracked changes in order to enhance readability.]

Article 14: Administrative Hearings

§3000. Authority and Purpose

These regulations are promulgated pursuant to Section 6224.5(d) of the Public Resources Code to provide the Commission with procedures for orderly hearings and just administration of penalties under Sections 6224.3 and following for unauthorized Structures on State Lands. The procedures established by these regulations shall not apply to the Commission's Abandoned Vessels program authorized by Public Resources Code Sections 6302.1 and following.

NOTE: Authority Cited: Section 6224.5, Public Resources Code. Reference: Sections 6108, 6224.3, 6302.1 et seq., Public Resources Code.

§ 3001. Definitions

- (a) As used in these regulations, words in the singular shall include the plural and words in the plural shall include the singular, unless the context otherwise requires. The following words, terms and phrases, when used in this Article, shall have the following meanings, unless the context clearly indicates otherwise:
- (1) "Advisory Staff" means the Commission's Executive Officer and his or her designees. The Advisory Staff provides legal and technical advice to the Commission related to an enforcement matter under this Article.
 - (2) "Commission" means the California State Lands Commission.
 - (3) "Commissioner" means a California State Lands Commissioner specified in Section 6101 of the Public Resources Code, or a designated alternate under Section 7.6 of the Government Code.
 - (4) "Commission Authorization" means a currently valid and unexpired, written and executed authorization to occupy State Lands, issued by the Commission.
 - (5) "Commission Meeting" means a regularly-noticed public meeting of the Commission.
 - (6) "Day" means calendar day. If a deadline falls on a weekend or state holiday, then the deadline will be deemed to be the next business day.

- (7) "Enforcement Staff" means the Chief or Assistant Chief of the Commission's Land Management Division and his or her designees. The Enforcement Staff is responsible for issuing the Notice of Violation and representing Commission staff before the Commission.
- (8) "Mail" means to send documents via the United States Postal Service, or reputable private carrier. The Respondent and Enforcement Staff may, and are encouraged to agree to service by electronic means including electronic mail or facsimile. Where such an agreement exists, "Mail" will include the agreed to method of electronic transmission. As between the Enforcement Staff, Advisory Staff, and/or the Commission, "Mail" includes any means reasonably calculated to ensure the documents arrive at their destination including hand delivery or courier.
- (9) "Notice of Violation" means the Notice of Violation substantially complying with the content set out in Appendix A.
- (10) "Presiding Officer" means the Commissioner designated to conduct the hearings under this Article.
- (11) "Respondent" shall mean a person or entity suspected of violating Section 6224.3 of the Public Resources Code.
- (12) "State Lands" means land under Commission jurisdiction, held in fee by the state of California. "State Lands" excludes those lands legislatively granted in trust to local jurisdictions, and lands where the underlying fee is not held by the state, but a public trust easement exists.
- (13) "Structure" means any human construction, including but not limited to: buildings, boat houses, docks, piers, buoys, revetments, fill, pilings, pipelines, groins, jetties, seawalls, breakwaters, bulkheads; along with all similar constructions.

NOTE: Authority Cited: Section 7.6, Government Code; Sections 6101, 6224.5, 6301, Public Resources Code. Reference: Sections 6102, 6216, 6301, 8705, Public Resources Code.

§ 3002. Prohibited Conduct

- (a) Unless otherwise exempted, all Structures on State Lands require Commission Authorization. If the Commission Authorization prohibits transfer or assignment, subsequent owners or assignees must be approved by the Commission, or its designee.
- (b) Structures constructed, placed, maintained, owned, used, or possessed without Commission Authorization; Structures for which Commission Authorization has expired or been terminated; or Structures which vary from or exceed Commission Authorization are prohibited and shall constitute grounds for imposition of penalties and/or an injunction by the Commission.

- (c) Submission of an application for the use of State Lands will not, by itself, remedy a violation. The Commission retains sole and absolute discretion to approve or deny applications submitted for the use of State Lands.

NOTE: Authority Cited: Sections, 6216.1, 6224.3, 6301, Public Resources Code. Reference: 6303.1 Public Resources Code.

§ 3003. Investigation and Discovery

- (a) Commission staff may investigate a suspected violation of Section 6224.3 of the Public Resources Code.
- (b) Commission staff may survey the land and/or Structures in question pursuant to Civil Code section 846.5.
- (c) The Enforcement Staff may issue a Notice of Violation if the facts so warrant in their judgment.

NOTE: Authority Cited: Section 846.5, Civil Code; Section 6224.5, Public Resources Code; Section 11180 Government Code; Section 8774 Business and Professions Code.

§ 3004. Notice of Violation Procedure; Uncontested Violations

- (a) The Notice of Violation shall describe the alleged violation and shall reference the documents on which Commission staff relies to provide a prima facie case. The Respondent may request any or all documents relied on by staff, which shall be provided within five (5) business days of the request and upon payment of the copying costs. The Respondent may request the documents to be sent by Mail, or may appear at the Commission's Sacramento office to inspect and copy the relevant records. The Commission may also make records available electronically or on its website.
- (b) The Notice of Violation shall specify that the Respondent must reply within 21 Days if they dispute the matters set forth in the Notice of Violation. The Notice of Violation shall include notice of the date, time, and location of the enforcement hearing where the matter will be heard if the Respondent fails to reply or does not dispute the allegations. The date of this hearing shall be not less than forty-five (45) Days from the date service is complete. If logistical considerations prevent specifying the precise starting time and/or address of the Commission Meeting, the Notice of Violation may state the date and city or general location provided the Respondent is provided notice at least ten (10) Days prior to the hearing of the precise location and start time.
- (c) The Notice of Violation shall be accompanied by a Statement of Defense form that substantially conforms to the content set out in Appendix B.

- (d) Personal service on a business entity may be completed in any manner that would satisfy the requirements of sections 416.10 or 416.20 of the Code of Civil Procedure. Personal service is deemed complete at the time of delivery.
- (e) In conjunction with being posted on the violating Structure, the Notice of Violation may be served by Mail that includes delivery verification. The usual mailing address, normal place of business, or the address on record where the Respondent's property tax bill is sent shall be presumed to be the correct address. Any competent member of the household may sign the delivery verification. Service by Mail is deemed complete 10 Days after mailing.
- (f) If a common Respondent or Respondents maintain multiple Structures in the same area, the Notice of Violation may be posted on a single Structure.
- (g) If an employee, agent, or person acting on behalf of the Commission attempts to post a Notice of Violation on a Structure and is prevented from doing so, or if posting the Notice of Violation on the Structure would place the employee or agent in danger, the employee or agent shall post the Notice of Violation in a visible location as close to the Structure as reasonably possible.

NOTE: Authority Cited: Sections 6224.4(a)(4), 6224.5, Public Resources Code. Reference: Sections 415.20, 416.10, 416.20, and 416.90, Code of Civil Procedure; Sections 11415.40 and 11440.20, Government Code.

§ 3005. Stipulation of Fact; Resolution of Matter Without Hearing

- (a) A Respondent or the Enforcement Staff may stipulate to any fact in issue. The stipulation must be in writing or made by oral statement on the record.
- (b) The Commission may resolve a matter with a stipulation, agreed settlement, or consent order, with the agreement of the Respondent, in lieu of holding a hearing. Such a resolution must be in writing or made by oral statement on the record.
- (c) The Advisory Staff may dismiss an individual Respondent or terminate an entire pending enforcement matter prior to the enforcement hearing upon discovering clear evidence that the Respondent is not liable for a violation of Public Resources Code section 6224.3.
- (d) Respondents are encouraged to contact the Enforcement Staff to determine whether a potential violation can be resolved without an enforcement hearing.

NOTE: Authority Cited: Section 6224.5, Public Resources Code; Section 11415.60, Government Code.

§ 3006. Public Notification; Change of Date or Venue

- (a) The Commission Meeting agenda shall include notice of the enforcement hearing.
- (b) If the date, time, or location of the Commission Meeting during which the enforcement matter will be heard changes, Commission staff shall Mail notice of the new date, time, and

place of the enforcement hearing to all Respondents at their last known address at least thirty (30) days prior to the new meeting date. If logistical considerations prevent specifying the precise starting time and/or address of the Commission Meeting, the notice may state the date and city or general location provided the Respondent is notified at least ten (10) Days prior to the hearing of the precise location and start time.

- (c) If a subsequent enforcement hearing is necessary, notice of the subsequent hearing may be given by either announcing the date, time, and place of the subsequent hearing on the record at the close of the enforcement hearing, or by Mail to all Respondents at least thirty (30) Days prior to the further enforcement hearing. If logistical considerations prevent specifying the precise starting time and/or address of the Commission Meeting, the notice may state the date and city or general location provided the Respondent is notified at least ten (10) Days prior to the hearing of the precise location and start time. Notice of a subsequent hearing will also be provided in the Commission Meeting agenda.
- (d) The Advisory Staff may postpone the enforcement hearing date for good cause provided the Respondent is notified at least forty-eight (48) hours prior to the original enforcement hearing date and receives notice of the new hearing date as required in subparagraph (b) above.

NOTE: Authority Cited: Section 6224.5, Public Resources Code. Reference: Section 11125, Government Code.

§ 3007. Ex Parte Communication

- (a) There shall be no communication, direct or indirect, regarding any issue in the proceeding, with the Commissioners, their alternates, the Commissioners' personal staff, or the Advisory Staff from a party or an interested person, without notice and opportunity for all parties to participate in the communication. For the purposes of this section:
 - (1) The Commissioners' personal staff includes staff of: the Office of the Lieutenant Governor, the California State Controller's Office, and the Department of Finance.
 - (2) A party includes the Respondent, their agents or representatives, and the Enforcement Staff.
- (b) Communication between Commission staff and the Commissioners or their alternates shall comply with Government Code sections 11430.10 et seq.
- (c) Communications in violation of this section shall be remedied according to Government Code sections 11430.40 and 11430.50.
- (d) Communications between the Respondent and Commission enforcement staff concerning the pending enforcement matter are not prohibited.

NOTE: Authority Cited: Section 6224.5, Public Resources Code, Sections 11430.10 et seq. Government Code.

§ 3008. Conduct of Persons at Hearings

- (a) The following conduct is prohibited during or near the place of an enforcement hearing:
 - (1) Refusing to take an oath or affirmation as a witness or thereafter refusing to be examined;
 - or

- (2) disorderly or boisterous conduct; or
- (3) obstructing or interrupting the proceeding or interfering with the participants.
- (b) The Presiding Officer may exclude any persons from the hearing or premises for a violation of this section. If the person violating this section is a witness, the Presiding Officer may exclude further testimony by such person. If the person violating this section is the Respondent, the Respondent may be excluded and denied any further opportunity to present evidence.

NOTE: Authority Cited: Section 6224.5 Public Resources Code.

§ 3009. Procedure for Contested Matters

- (a) In the event that a Respondent responds within the 21 Day period specified in section 3004(b) above, the initial hearing date will be vacated and the following procedures apply.
- (b) The Enforcement Staff shall prepare a statement of position and Mail a copy to the Respondent and the Advisory Staff. The statement of position will set forth the evidence and argument suggesting the Respondent has violated section 6224.3 of the Public Resources Code. The Enforcement Staff's statement of position shall be Mailed to the Respondent at least thirty (30) Days after service of the Notice of Violation. Except evidence submitted with its response, all evidence and argument the Enforcement Staff wishes the Commission to consider must be submitted with the Enforcement Staff's statement of position.
- (c) The Respondent shall complete the Statement of Defense form and provide any other documents, evidence, or arguments the Respondent wishes the Commission to consider within forty-five (45) Days of the Enforcement Staff submitting its statement of position. The Enforcement Staff's statement of position will specify this deadline.
- (d) The Enforcement Staff may prepare a response to the Respondent's Statement of Defense or other evidence and arguments. The Enforcement Staff's response shall be Mailed to the Advisory Staff and Respondent at least forty-five (45) Days prior to the enforcement hearing date.
- (e) It is the policy of the Commission to avoid surprise testimony and exhibits. The Enforcement Staff and Respondent must each submit in advance of the hearing all evidence the party would like the Commission to consider. Absent a showing of good cause and lack of prejudice to the parties, the Presiding Officer may exclude material that is not submitted in accordance with these regulations. Excluded material will not be considered by the Commission.
- (f) On or before the deadlines specified above, the Enforcement Staff and Respondent shall submit:
 - (1) All evidence the party would like the Commission to consider. Evidence already in the Commission's files may be submitted by reference as long as the location of the evidence is clearly identified.
 - (2) All legal and technical arguments or analysis.
 - (3) The name of each witness (including Commission staff) whom the party intends to call at the hearing, the subject(s) that will be covered by each witness, and the estimated

time required by each witness to present their testimony. Witness testimony at the hearing may not exceed the scope of previously-submitted written material.

- (4) The qualifications of each expert witness, if any.
- (5) The Enforcement Staff may submit evidence of any type stated above with the Enforcement Staff's response if such evidence responds to arguments or evidence raised in the Respondent's arguments or evidence.
- (g) The Advisory Staff shall review the timely submitted evidence and argument and prepare a recommended decision and order. The recommended decision and order shall be in writing and shall include:
 - (1) a copy of the timely submitted arguments and evidence;
 - (2) a brief summary of (A) any background to the alleged violation, (B) the allegations made by the Enforcement Staff, (C) a list of all allegations either admitted or not contested by the Respondent, (D) any timely submitted defenses and mitigating factors asserted by Respondent, and (E) any argument or evidence in rebuttal to matters raised by the Respondent;
 - (3) a summary and analysis of all unresolved issues;
 - (4) a recommended finding of fact;
 - (5) the amount of any recommended civil penalty, along with any subsequent increase in the amount;
 - (6) the name of the Respondent required to pay the civil penalty;
 - (7) the date on which the civil penalty begins;
 - (8) the recommended text of any Commission orders appropriate under the circumstances, including an injunction to cease and desist conduct, an order to surrender possession of State Land, an order to remove Structures, or an order to restore State Lands.
 - (9) The date and location of the Commission meeting whereat the Respondent may appear and be heard. If logistical considerations prevent specifying the precise starting time and/or address of the Commission Meeting, the recommended decision may state the date and city or general location provided the Respondent is notified at least ten (10) Days prior to the hearing of the precise location and start time.
- (h) At least thirty (30) Days prior to the enforcement hearing, the Advisory shall Mail the recommended enforcement order to the Respondent, the Presiding Officer, and other members of the Commission.

NOTE: Authority Cited: Sections 6224.5 Public Resources Code.

§ 3010. Admissibility of Evidence

- (a) Enforcement hearings will be conducted in accordance with the provisions and rules of evidence set forth in Government Code section 11513. Hearsay evidence is admissible subject to the provisions of Government Code section 11513.
- (b) The Presiding Officer may exclude unduly repetitious or irrelevant evidence.

NOTE: Authority Cited: Section 11513, Government Code; Section 6224.5, Public Resources Code.

§ 3011. Failure of Respondent or Witness to Appear at Enforcement Hearing

- (a) Failure of a Respondent or witness to attend the properly noticed enforcement hearing constitutes a waiver of the opportunity to be heard at such hearing.
- (b) If the Respondent fails to appear after being served, the Commission may issue a decision and order, and the Commission may impose a fine.

NOTE: Authority Cited: Sections 6224.4(c), 6224.5 Public Resources Code; Section 11415.40 Government Code. Reference: Section 11506, Government Code.

§ 3012. Enforcement Hearing Procedure

Enforcement hearings shall proceed in the following manner:

- (a) The Commission Chairperson or acting Chairperson shall serve as the Presiding Officer. The Presiding Officer shall announce the matter and ask all Respondents and/or their authorized agents present to identify themselves for the record.
- (b) The Presiding Officer may impose time limits for presentations by the Enforcement Staff, the Respondent, and the public at the hearing. The Presiding Officer may administer oaths to all witnesses.
- (c) The Enforcement Staff shall summarize the law, facts, and evidence supporting staff's position. The Enforcement Staff may present their position on the recommended enforcement order.
- (d) Each Respondent shall summarize its positions on the matters relevant to the alleged violation or recommended decision and order with particular attention to those issues where an actual controversy exists between the staff and the Respondents.
- (e) Other speakers may speak concerning the matter.
- (f) The Presiding Officer and Commissioners may ask questions at any time during the hearing or deliberations.
- (g) The Commission may postpone or continue an enforcement hearing if, in the Commission's sole and absolute discretion, circumstances or fairness so dictate.
- (h) The Presiding Officer shall close the public hearing after the Enforcement Staff, the Respondent, and any additional speakers have completed their presentations.

NOTE: Authority Cited: Section 6224.5, Public Resources Code.

§ 3013. Written Decision and Order

- (a) After the enforcement hearing has concluded, the Commission shall render a decision as to whether or not the Respondent is liable for a violation of Section 6224.3 of the Public Resources Code, the appropriate penalty, and any further orders appropriate under the circumstances.

- (b) The Commission may:
 - (1) Adopt the recommended decision and order;
 - (2) Modify the recommended decision and order; or
 - (3) Direct the Advisory Staff to draft a decision and order on terms dictated by the Commission.
- (c) Once adopted by vote, the Commission's decision is final. The Commission may adopt a decision by majority vote, pursuant to the Commission's usual voting procedures. The decision and final order shall include notice that the Respondent may file a petition for writ of mandate with the superior court for review of the order pursuant to section 1094.5 of the Code of Civil Procedure within sixty (60) Days after the decision has become final.
- (d) The Respondent shall be provided a copy of the decision and order. The decision and order may be provided to the Respondent in person at the conclusion of the hearing or by Mail.

NOTE: Authority Cited: Sections 6224.3, 6224.4, and 6224.5, Public Resources Code; Section 11425.50, Government Code.

§ 3014. Penalty

- (a) The civil penalty imposed will be based on the per diem method of 6224.3(b) rather than the formula based on the market rate rental of the property unless the maximum penalty of \$1,000 a Day would represent a discount in rent. If the market rate rental of the property exceeds \$365,000 annually, the Commission may impose a monthly penalty of up to 13.33% of the annual rent, which represents one twelfth (1/12) of one hundred sixty percent (160%) of the normal rent, rounded down.
- (b) For properties where the market rental rate is below \$365,000 annually, the fine imposed shall be:
 - (1) Five hundred dollars (\$500) per Day for the first one hundred twenty (120) Days.
 - (2) One thousand dollars (\$1,000) per Day starting on the one hundred twenty-first (121st) Day.
- (c) The Commission shall consider the factors specified in Section 6224.3(c) of the Public Resources Code before imposing the penalties specified above, and may modify the penalties based on such factors.
- (d) A penalty under this Article shall be imposed from the first Day after the decision becomes final as defined in regulation 3013, subdivision (c) and shall continue until the violation is remedied. The Commission may modify the penalty to a reduced amount for a set period of time.
- (e) A penalty under this Article may be tolled for a reasonable time while Commission staff process an application for Commission Authorization. The penalty may be tolled from the date Commission staff receives a completed application and all processing fees until a valid Commission Authorization exists, or as otherwise provided in the decision and order. If a civil penalty is tolled under this subparagraph, then the following conditions will apply:

- (1) The Respondent must diligently work toward completion of the application process and execute a Commission Authorization.
- (2) The Commission may impose a limit on how long the penalty may be tolled. The limit shall be based on the circumstances of the case. The Advisory Staff may extend the tolling on request if it finds that a longer period is appropriate. Such circumstances include unforeseen complexities in the lease, environmental review, significant delays caused by Commission staff, or unavoidable circumstances. A penalty authorized by this Article may authorize the Advisory Staff to make such findings.
- (3) If a penalty has been tolled, and the Respondent fails to diligently complete the application process, or does not execute a valid Commission Authorization for the Structures specified in the decision and order within the tolling period, or any extensions thereto, the penalty will resume as if it had not been tolled, including any penalties that would have accrued during the tolling period.
- (f) A penalty under this Article may be tolled for a reasonable time for the Respondent to remove all Structures from State Land. The maximum duration the penalty may be tolled shall be determined by the Commission based on the circumstances of the case. If the Respondent fails to diligently pursue removal, or fails to remove the Structures in the allotted period, the penalty will resume as if it had not been tolled, including any penalties that would have accrued during the tolling period.
- (g) A penalty under this Article shall terminate when:
 - (1) the Structure(s) specified in the decision and order are removed from State Lands, and all remnants or debris therefrom have been removed; or
 - (2) the Respondent obtains Commission Authorization for all Structures specified in the decision and order.
- (h) The Commission may, in its sole and absolute discretion, waive some or all of the penalties imposed under this Article on the Respondent's remedy of the violation.

NOTE: Authority Cited: Sections 6224.3, 6224.4, and 6224.5, Public Resources Code.

§ 3015. Enforcement Record

The record of an enforcement hearing shall consist of the following unless they do not exist:

- (a) the Notice of Violation and the Enforcement Staff's statement of position including all documents referred to in the documents;
- (b) the Advisory Staff's recommended decision and order, including all documents referred to therein;
- (c) the Respondent's Statement of Defense form and other timely submitted evidence and argument;

- (d) Evidence and argument submitted by the Respondent but excluded from the record, along with the reasons why such evidence was excluded;
- (e) minutes of all Commission enforcement hearings on the matter or a transcript of the proceedings;
- (f) evidence submitted by the Respondent, or presented by Commission staff at the enforcement hearing if admitted by the Presiding Officer and not already included above;
- (g) the final decision and order approved by the Commission;
- (h) any statutes, regulations, or other legal authorities or precedents relied on by the Commission or the Respondent; and
- (i) any other information or documents considered or relied on by the Commission in the matter.

NOTE: Authority Cited: Section 6224.5 Public Resources Code.

§ 3016. Precedent Decisions.

The Commission may designate a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur as a precedent decision.

NOTE: Authority Cited: Sections 6108 and 6224.5 Public Resources Code, Section 11425.60, Government Code.